

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MARIO SOLARES,  
Plaintiff,  
v.  
SHAWN HATTON,  
Defendant.

Case No. [5:17-cv-01262-HRL](#)

**ORDER TO SHOW CAUSE**

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. The instant petition is not “so incredible or frivolous as to warrant summary dismissal.” Hendricks v. Vasquez, 908 F.2d 490, 492 (9th Cir. 1990). Accordingly, the court orders as follows:

1. The Clerk shall serve by mail a copy of this order and the petition (Docket No. 1) and all attachments thereto, as well as a magistrate judge jurisdiction consent form,

on Respondent and Respondent's attorney, the Attorney General of the State of California.

2. Respondent shall file with the court and serve on Petitioner, within **ninety (90) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. At that time, Respondent shall also return the magistrate judge jurisdiction consent form.
3. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse (a reply) with the Court and serving it on Respondent within **thirty (30) days** of the date the answer is filed.
4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement of non-opposition within **twenty-eight (28) days** of receipt of the motion, and Respondent shall file with the court and serve on Petitioner a reply within **fourteen (14) days** of receipt of any opposition.

SO ORDERED.

Dated: November 15, 2017

  
HOWARD R. LLOYD  
United States Magistrate Judge